

***Remarks***

Upon entry of the foregoing amendment, claims 6, 7, 8, and 9 are pending in the application, with claim 6 being the independent claims. Claims 6, 7 and 9 are sought to be amended.

Claim 6 has been amended to more accurately describe that which the Applicants believe to be the invention. Support for this amendment is found in Table A on page 11 in the original specification, which shows the synergistic effect of the compound combination. Applicants believe that this amendment creates no new matter.

Claim 7 has been amended to depend from claim 6. Claim 9 has been amended merely to recite more conventional claim language.

Based on the above amendment and the following remarks, Applicants respectfully request that the Examiner reconsider all outstanding rejections and that they be withdrawn.

**I.      *References Considered by the Examiner***

The Examiner has stated that references listed in the specification but not submitted in an Information Disclosure Statement or specifically cited by the Examiner have not been considered. Applicants note that all the reference listed in the specification, or an English language equivalent thereof, were submitted in the Information Disclosure Statement filed on December 12, 2004. The Examiner-initialed Form PTO-1449 mailed to Applicants on November 30, 2005 along with the first Office Action indicates that the Examiner has considered each of these references.

**II.     *Amendment reciting "synergistically effective"***

Applicants sincerely thank the Examiner for the helpful telephone call conducted on Tuesday, August 16, 2006 between the undersigned and the Examiner. During the

conversation, the present application was discussed in terms of possible amendments to render the claims allowable. Applicants understand that the amendment to claim 6 adding "synergistically effective" addresses the Examiner's concerns with respect to the synergistic effect presented in the specification, but previously not in the claims. The Examiner stated that she would consider the amendments submitted in the present Reply.

**III. Rejections under 35 U.S.C. § 103(a)**

The Examiner has maintained the rejection of claims 6, 7, 8 and 9 under 35 U.S.C. § 103(a) as being unpatentable over Isenring *et al.*, (U.S. Patent No. 6,407,100; "the '100 patent") and Jautelat *et al.* (U.S. Patent No. 5,789,430; "the '430 patent"). Applicants respectfully traverse this rejection.

Applicants reiterate that for the reasons detailed in Applicants' Reply of May 1, 2006, the Examiner has failed to properly establish a case of *prima facie* obviousness against the present claims. In sum, there is nothing in any of the cited patents (including the general statement that active compounds can be combined synergistically), the knowledge in the art and the nature of the problem to be solved that would suggest the Applicants' three compound combination of prothioconazole, trifloxystrobin and tebuconazole. In view of the present amendments specifying a synergistic effect, the failure of the cited art to support a *prima facie* case of obviousness is even more glaring.

The cited art only teaches that compounds could be combined, but in no way does the cited art suggest which specific compounds to combine, let alone the presently claimed three-compound combination that possesses a synergistic effect. According to the '100 patent, "combination compositions are suitable for broadening the spectrum of action or for specifically influencing plant growth." Column 8, lines 51-53. According to the '430

patent, known compounds can be mixed with its compounds to, "widen the spectrum of action or to prevent the build up of resistance. In many cases this results in synergistic effects . . ." Column 32, lines 27-29. However, neither the '100 patent or the '430 patent specifically refer to combining three actives, much less the presently claimed three-component combination. Taken together, the '100 and '430 patents, at most, teach that compounds can be, and often are combined.

In contrast to the cited patents, the present invention is directed to a specific combination, which possesses a synergistic effect and comprises prothioconazole, trifloxystrobin and tebuconazole. Neither of these characteristics are obvious in view of the cited art, and both of these characteristics are now explicitly recited in the amended claims present herein.

#### **IV. Synergistic Effects**

The Examiner has again asked how the data represent a synergistic effect and not an additive effect. Office Action, p.5, under "Data in Specification".

The data in Table A on page 11 of the specification show the activities of 100 g/ha applications of trifloxystrobin, prothioconazole and tebuconazole individually, and as a "mixture according to the invention," which is a compound combination comprising all three as presently claimed. The Table shows efficacy (in %) as follows: trifloxystrobin (labeled as Ex. I) 67; prothioconazole (labeled as Ex. II) 56, and tebuconazole (labeled as Ex. III) 22. An additive effect, *i.e.* the simple sum of all activities, predicts that mixing in less-active components, prothioconazole and tebuconazole, with trifloxystrobin, would result in a compound combination having a *decrease* in efficacy from 67%. It would be expected that the compound combination applied at 100 g/ha

cannot surpass 67%, which is the efficacy of the most active component, trifloxystrobin. However, the three-component combination of claim 6 possesses an *increase* in efficacy to 78%. Therefore, Applicants have shown that the efficacy of the trifloxystrobin, prothioconazole and tebuconazole combination cannot be the result of an additive effect, but is indeed a synergistic effect.

Applicants submit that the amended claims are now in condition for allowance and request that the Examiner remove the rejection of claims 6, 7, 8 and 9.

***Conclusion***

All of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding rejections and that they be withdrawn. Applicants believe that a full and complete reply has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Prompt and favorable consideration of this Amendment and Reply is respectfully requested.

Respectfully submitted,

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